IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2005

CORAM

THE HONOURABLE MR JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR JUSTICE S.K. KRISHNAN

HABEAS CORPUS PETITION NO.1305 OF 2004

Mrs. Sharmila Zakkariah ... Petitioner

Vs.

1. State of Tamil Nadu
rep. by Secretary to the
Government, Public (SC)
Department, Fort St. George
Chennai - 600 009.

2. Union of India
rep. by Secretary to the
Government, Ministry of
Finance, Department of Revenue
COFEPOSA Unit
New Delhi. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the records of the first respondent made in G.O.No.SR./1230-3/2004 dated 13.10.2004 and quash the same and set at liberty the detenu Jakkariah son of Abdul Jabbar presently undergoing detention in Central Prison, Chennai.

For Petitioner : Mr. B. Kumar
Senior Counsel
for Mr. B. Sathish Sundar

For R1 : Mr. A.Kandasamy, Addl. Public Prosecutor
For R2 : Mrs. Vanathi Srinivasan, ACGSC

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O R D E R

(Order of the Court was made by P. SATHASIVAM, J.)

The wife of the detenu by name Jakkariah challenges the detention order dated 13.10.2004 issued under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. Heard the learned Senior Counsel for the petitioner as well as the respondents.

3. Though several contentions have been raised questioning the impugned order of detention, the learned Senior Counsel for the petitioner at the first and foremost by drawing our attention to the details, namely, the value of the goods seized from the baggage of the detenu, would contend that in the light of conflicting statement in para-(vi) and (vii) of the Grounds of Detention, the impugned order of detention is liable to be quashed on the ground of total non-application of mind. While elaborating the said contention, the learned Senior Counsel for the petitioner has brought to our notice that in Ground No.(i), it is specifically stated that the detenu had declared (only a hand baggage and the value of the goods as Rs.15,000/-). In Ground No.(vi) after referring various provisions of the Foreign Trade (Development & Regulation) Act, 1992, Customs Act, 1962 and Foreign Trade Policy for 2004-2009, it is stated that the goods of foreign origin in trade quantities valued at Rs.6,68,715/- (CIF) that were seized from baggage. In the next paragraph, namely, Ground No.(vii), it is stated that the CIF value of the goods of foreign origin in trade quantities seized from the baggage brought by the detenu is Rs.15,80,365/- and the market value of the same is Rs.24.50 lakhs approximately. Insofar as the amount of Rs.15,80,365/- referred to in Ground No.(vii), paragraphs 6 and 7 of the paper book supplied to the detenu show the details and the total value mentioned therein is Rs.15,80,365/-. The same has been correctly stated in Ground No.(vii) of the Grounds of Detention. Insofar as the value of Rs.6,68,715/-(CIF) mentioned in paragraph-(vi) of the Grounds of Detention, there is no explanation or detail how the said amount has been arrived by the Detaining Authority. In the absence of any explanation or information or detail, as rightly contended by the learned Senior Counsel for the petitioner, on seeing the Grounds of Detention, undoubtedly, the detenu would get confused. Even during the course of argument, when this was brought to the notice, the learned Additional Public Prosecutor fairly stated that the value mentioned in Ground No.(vi) is not correct and is not in a position to explain the same. In such

circumstance, as rightly contended by the learned Senior Counsel for the petitioner, in the absence of proper explanation for giving two figures in Ground Nos.(vi) and (vii) in the Grounds of Detention, we are of the view

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that the above factual details exhibit the total non-application of mind on the part of the Detaining Authority. On this ground, the impugned order of detention is liable to be quashed.

4. It is also relevant to note that we have already referred to the statement of fact made by the Detaining Authority in Ground No.(i), namely, in the customs declaration, the detenu had declared only a hand baggage. On the other hand, a perusal of declaration made by the detenu, which finds place at page No.12 of the typed set supplied to the detenu shows that the detenu has not filled up the columns 3 and 4, namely, number of checked in baggage and number of hand baggage. In such circumstance, it is presumed that the statement of fact made in the grounds of detention does not reflect the true statement made by the detenu. This has also not been explained before us.

5. In the light of the above discussion, the impugned order of detention dated 13.10.2004 is liable to be quashed. Accordingly, the same is quashed and the detenu, namely, Jakkaraiah is directed to be set at liberty forthwith from the custody, unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The Secretary to the Government
The State of Tamil Nadu
Public (SC) Department,
Fort St. George
Chennai - 600 009.

2. The Secretary to the Government
The Union of India
Ministry of Finance,
Department of Revenue
COFEPOSA Unit
New Delhi.

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3. The Superintendent of Central Prison
Central Prison, Chennai.
(in duplicate for communication to detenu).

4. The Public Prosecutor
High Court, Madras.

5. The Secretary to Govt.,
Govt. of Tamil Nadu,
Public (Law and Order) Department,
Fort St. George, Madras 9.

6. The Sub Asst. Registrar,
COFEPOSA Section, High Court,
Madras.

+ 1 CC to Mr.B.sathish Sundar, Advocate SR NO 19415

+ 1 CC to Mrs.Vanathi Srinivasan, ACGSC SR NO 19669

H.C.P.No.1305 OF 2004

25.4.2005

SMK(CO)
GP/28.4.

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